

## ARTICLE II. REVIEW PROCEDURES

### DIVISION 1. GENERAL ZONING REVIEW PROCEDURE

#### Sec. 23A-31. Zoning Compliance Review

Review to determine whether any application conforms to zoning regulations is conducted in accordance with this section. Interpretations of zoning regulations and certifications of approval of applications in compliance with all zoning regulations may be appealed to the Board of Adjustment

For certain applications as specified in the LUC, there are also Special Zoning Review requirements which may involve either a Limited Notice Procedure in accordance with Division 2 of this Chapter or a Full Notice Procedure in accordance with Division 3 of this Chapter. Limited Notice Procedures may be appealed to the Board of Adjustment. Full Notice Procedures may be subject to an appeal to either the Board of Adjustment or the Mayor and Council in accordance with Division 4 of this Chapter.

For proposed development in conformance with the property's existing zoning regulations, whether it is new construction, expansion of existing construction, new use, change in use, or expansion of an existing use, review for conformance with the provisions of the Land Use Code (LUC), Chapter 23 of the Tucson Code, this Chapter and applicable Development Standards will be by Development Services Department (DSD). The applications requiring zoning compliance review include, but are not limited to, temporary uses, business licenses, tenant improvement, home occupations, site plan review, new construction, expansion of existing premises, and certain electrical reconnections.

1. *Application.* Applications shall conform to the requirements set forth in the LUC, this Chapter and appropriate Development Standards. The Director may require additional information and materials following acceptance of an application where it is determined that such information is important to the review of the application. The Director may conditionally accept an application subject to obtaining subsequent approvals. The Director shall not be required to make a decision on an application until at least five (5) days following the acceptance of the additional submittal information or five (5) days following the time for submission of a recommendation by an advisory body.
2. *Review Process.* Review is conducted by the Development Services Department staff and other agencies, committees or advisory boards as specified in this Chapter, the LUC and as may be deemed appropriate by the Director. Applications are reviewed for compliance this Chapter, the LUC and applicable Development Standards. Where an application requires review under more than one special zoning review procedure, the Development Services Director shall determine whether reviews shall be

conducted sequentially or concurrently based upon the issues raised by each application. Where the Director determines that reviews shall be conducted sequentially, the date of acceptance for each procedure shall commence upon the date of decision of the prior procedure unless otherwise stated by the Director.

3. *Decision.* Except as otherwise provided, the Director determines whether to approve or deny an application. For all general and special zoning review decisions, time periods specified for the Director's decision may be extended by the applicant.
4. *Written statement of reasons for denial.* If an application is not approved due to lack of compliance with zoning regulations, the applicant may request a written statement of the basis for the rejection of the application, which shall then be provided within three (3) days. Projects under this review process may be approved by the DSD director or designee if they are in conformance with the LUC, this Chapter and applicable Development Standards.
5. *Zoning Interpretations and Zoning Certification.* For any development reviewed in accordance with this Article which involves an interpretation of the substantive provisions of the LUC or the application of substantive zoning provisions in the zoning certification of a development plan, site plan, tentative plat or final plat, a request for a written interpretation or certification may be submitted to the Zoning Administrator in the following manner:
  - a. A person affected by the proposed development, as defined in subsection b below, may request in writing that any decision requiring a interpretation of substantive zoning regulations be reviewed and decided by the Zoning Administrator. The applicant or the Zoning Administrator may place other parties on notice of the determination by providing a copy of the application to such parties at the time it is submitted to the Zoning Administrator and listing such persons as a party of record in the application.
  - b. A person affected by the proposed development shall include the applicant, owners or residents of property within three hundred (300) feet of the site, any neighborhood association within one mile and any person who may be personally affected by the proposed development in a manner that is beyond the impact of the development on the general public.
  - c. The Zoning Administrator shall make the final zoning determination within five (5) days of receipt of any such written request. Any party interested in the decision may request a copy of

the final zoning determination. The final zoning determination or certification shall be mailed to the applicant and all parties of record within three (3) days of the determination.

- d. The Zoning Administrator may designate certain decisions as precedent for future decisions. Any decision so designated shall be binding upon future cases unless reversed on appeal. One copy of all precedent decisions shall be maintained by the Zoning Administrator and one copy shall be maintained by the City Clerk for public review and inspection.
  - e. The Zoning Administrator's determination shall be binding upon the applicant and all parties of record unless appealed.
6. *Appeal of Zoning Interpretations.* Within thirty (30) days of a final zoning determination by the Zoning Administrator that involves the interpretation of the substantive zoning provisions of the Land Use Code, the applicant, and any party of record may appeal that determination to the Board of Adjustment pursuant to Sec. 23A-61.
7. *Stay of the Issuance of Plan Approvals and Permits During Appeals.* Where an administrative appeal is submitted in a timely manner to a City official or body such as the Director, the Board of Adjustment, the Zoning Examiner or the Mayor and Council in accordance with this Chapter, no permits shall be issued and no formal plan approvals or inspections shall be made on any portion of an application that is subject to the appeal while that appeal, review period or the time provided for reconsideration is pending. DSD may, in the discretion of the Director, continue to process review of applications and may issue permits or plan approvals on applications or portions thereof that are not affected by the appeal. Where a final City decision has been made following City administrative appeals, any further appeal shall be to Superior Court in accordance with applicable law. An appeal to Superior Court shall not stay the issuance of permits or plan approvals unless the Superior Court issues such a stay.

## **Sec. 23A-32                      Administrative Design Review Procedure**

The following procedure is for administrative design review where such review is required by the LUC. This procedure applies to review of minor development applications in Historic Preservation Zone (HPZ) districts in accordance with LUC Sec. 2.8.8.5.c and design review in the Rio Nuevo and Downtown (RND) Zone. The criteria for determining whether development in the RND Zone is subject to minor, full or conceptual review are stated in LUC Sec. 2.8.10.4.

- 1. *Preapplication Conference.* A preapplication conference with the Development Services Department is required to determine whether the application shall be reviewed through the minor, conceptual or full design review procedure. The

applicant may request informal review by the DRB as part of the preapplication process.

2. *Minor Design Review.* Development subject to the Minor Design Review procedure shall reviewed as follows.
  - a. *Submittal.* Upon submittal, DSD staff shall review the application to determine that it provides all required information. The application shall be accepted or rejected within two (2) days.
  - b. *Staff Review.* DSD staff shall review the application to determine compliance with the applicable requirements and shall recommend to the Director whether to approve or reject the application.
  - c. *Advisory Board Review.* Applications in the RND Zone shall be referred to the Design Review Board (DRB) to be scheduled for consideration at the first available meeting for review in accordance with design criteria of Development Standard 9-05.0. If the proposed development includes exterior changes for buildings on or eligible for inclusion on the National Register of Historic Places, the application and elevation drawings will be forwarded to the Tucson-Pima County Historical Commission Plans Review Subcommittee for review and recommendation to the Director. Applications for development in HPZ districts shall be referred to the district advisory board and the Plans Review Subcommittee for review and recommendation.
  - d. *Decision.* The Director shall make a decision on whether to accept or reject the application within seven (7) days of acceptance of the application. The Director may, alternatively, determine that the application be subject to the Full Design Review procedure.
  - e. *Notice of Decision.* Notice of the decision shall be provided to the applicant within three (3) days of the date of the decision and, in the case of a Historic Preservation Zone Minor Design Review, the appropriate advisory board and the Plans Review Subcommittee.
  - f. *Appeal to the Board of Adjustment.* If an application is denied, the applicant may appeal the decision to the Board of Adjustment in accordance with Sec. 23A-61 by filing an appeal within five (5) days of the notice of decision with the Zoning Administrator.
3. *Major Project Design Review.* Development subject to Major Project Design Review shall be reviewed as follows.
  - a. *Submittal.* Upon submittal, DSD staff shall review the application to determine that it provides all required information. The application shall

be accepted or rejected within four (4) days. If the application is accepted, it is forwarded to the Design Review Board (DRB) to be scheduled for consideration at the next available DRB meeting.

- b. *Review.* DSD staff shall review the application to determine conceptual compliance with the applicable RND requirements and with other code requirements including those in the LUC, building codes and this Chapter. These reviews shall be preliminary and shall not establish any right on the part of the applicant. DSD staff shall report preliminary findings and recommendations the Director. The application may be referred to the DRB or appropriate historic advisory boards for preliminary review during this time period.
- c. *Request for advisory board action.* At any time during this review, the applicant may request final conceptual review by the DRB and any appropriate historic board. When such a request is made, the application shall be scheduled before the appropriate advisory board for final action on the conceptual plan within thirty (30) days.
- d. *Advisory Board Review.* Applications in the RND Zone shall be referred to the Design Review Board (DRB) to be scheduled for consideration at the first available meeting for determination of Preliminary Findings and Recommendations within thirty (30) days of acceptance of the application. The DRB, in formulating its Preliminary Findings and Recommendations, shall evaluate the application based on the design criteria in Development Standard 9-05.0. If the proposed development includes exterior changes for buildings on or eligible for inclusion on the National Register of Historic Places, the application and elevation drawings will be forwarded to the Tucson-Pima County Historical Commission Plans Review Subcommittee for review and recommendation to the Director within thirty (30) days of acceptance of the application.
- e. *Recommendation for Final Approval.* Where the project is sufficiently detailed and complete, the advisory boards may recommend to the DSD Director that the application is ready for final approval without being referred to the Full Review Process.
- f. *Summary of Preliminary Findings and Recommendations.* The Director shall make a summary of the preliminary findings and recommendations by the staff, DRB and TPHC Plans Review Subcommittee. The summary shall be provided to the applicant within three (3) days of receipt of the last recommendations.
- g. *Action by Applicant.* Upon receipt of the preliminary findings and recommendations, the applicant incorporates the findings and

recommendations into the final drawings and plans and submits these final documents for Full Design Review in accordance with Sec. 23A – 32(4).

- h. *Final Approval.* Where there is a recommendation from the advisory bodies for final approval, and where the DSD Director determines that the application is sufficiently detailed and complete to establish full compliance with the RND regulations, the application may be approved without being referred for further review through the Full Design Review procedure in accordance with Sec. 23A – 32(4).

4. *Full Design Review.* Development subject to the Full Design Review procedure shall reviewed as follows.

- a. *Submittal.* Upon submittal, DSD staff shall review the application to determine that it provides all required information. The application shall be accepted or rejected within four (4) days. If the application is accepted, it is forwarded to the Design Review Board (DRB) to be scheduled for consideration at the next available DRB meeting.
- b. *Review.* DSD staff shall review the application to determine compliance with the applicable requirements and shall recommend to the Director whether to approve or reject the application.
- c. *Advisory Board Reivew.* Applications in the RND Zone shall be referred to the Design Review Board (DRB) to be scheduled for consideration at the first available meeting for review and recommendation. The DRB, in formulating its recommendation, shall evaluate the application based on the design criteria in Development Standard 9-05.0. If the proposed development includes exterior changes for buildings on or eligible for inclusion on the National Register of Historic Places, the application and elevation drawings will be forwarded to the Tucson-Pima County Historical Commission Plans Review Subcommittee for review and recommendation to the Director.
- d. *Decision.* The Director shall make a decision on whether to accept or reject the application based upon required design criteria and the recommendations of the DRB and the TPHC Plans Review Subcommittee. The decision shall not earlier than fourteen (14) days and shall not be later than thirty (30) days of acceptance of the application.
- e. *Notice of Decision.* Notice of the decision shall be provided to the applicant within three (3) days of the date of the decision.
- f. *Appeal of the Director's Decision.* The applicant, or in cases involving historic properties the advisory board or the Plans Review Subcommittee,

may appeal the Director's decision to the Board of Adjustment in accordance with Sec. 23A-61 by submitting an appeal to the Director within fourteen (14) days of the date of decision. The appeal shall address and be determined upon the purpose, intent, specific regulations, specific goals and the objectives of the RND zone.

## **Sec. 23A-33                      Subdivision of Land**

The following procedure is for review of applications for the subdivision of land by subdivision, minor subdivision or lot split for approval in compliance with the requirements of the Tucson Code, Chapter 23, Land Use Code (LUC), Article IV.

### **Sec. 23A-33.1 Subdivision plat Process**

The subdivision of land through the platting process as provided in LUC 4.1.6 shall be reviewed and approved as follows.

1.     *Tentative plat review.* All subdivision applications, except as provided for minor subdivisions (see Sec. 23A-33.2), require the review and approval of a tentative plat. The tentative plat shall be prepared in accordance with requirements set forth in Development Standard No. 2-03.0.
  - a.     *Pre-application conference.* A pre-application conference with development services department (DSD) staff is encouraged.
  - b.     *Application.* Applications for tentative plats shall be in accordance with Development Standard No. 2-03.0. Only complete applications will be accepted for processing.
  - c.     *Review.* Tentative plats are reviewed by the community design review committee (CDRC) for compliance with city regulations in accordance with Development Standards No. 1-03.0 and 2-03.0.
    1.             As provided by the Land Use Code (LUC), section 4.1.7, one (1) year from the date the application was accepted for review is provided for the applicant to secure approval based on regulations in place at the time the application was accepted. Should the approval not be secured within the required timetable, the tentative plat shall be revised to comply with regulations at the time of re-submittal. The re-submittal initiates a new one (1) year time period.
    2.             Extensions to the time period may be granted in accordance with section 4.1.7.4 of the Land Use Code (LUC).
  - d.     *Approval.* As provided in the Land Use Code (LUC), section 4.1.6.1, the development services department (DSD) director shall approve the

tentative plat within five (5) days of receiving notification of approval from all community design review committee (CDRC) members, provided the zoning of the property permits the proposed use of the property. If the use of the property as proposed on the plat is subject to the adoption of a rezoning ordinance or includes property in a resource overlay zone that is subject to the DSD Full Review Procedure in Section 23A-51, the tentative plat cannot be approved until the effective date of the rezoning ordinance as provided in the LUC, section 4.1.6.1 or approval pursuant to 23A-51 or appeal thereof.

Upon notice that the tentative plat is approved, the applicant shall submit the number of copies of the tentative plat required by the development services department (DSD) for placement of the approval signature. A copy of the signed version will be sent to the applicant for submittal with grading plans and other development applications for this development site. The final plat, the grading plan, and other building permit applications will be reviewed by staff for conformance with the signed version of the tentative plat.

- e. *Notice of decision.* Written notice of the decision shall be issued to the applicant. The notice shall include the date of approval and the expiration date of the tentative plat approval period as provided in the Land Use Code (LUC), section 4.1.7.
  - f. *Review after expiration of approval.* Review of plats with expired approval dates shall be in accordance with section 4.1.7.5 of the Land Use Code (LUC).
2. *Final plat review.* All proposed subdivisions, including minor subdivisions, require the review and approval of a final plat. The final plat shall substantially conform to the approved tentative plat and be prepared in accordance with final plat requirements set forth in Development Standard No. 2-03.0.
- a. *Pre-application conference.* A pre-application conference with development services department (DSD) staff is encouraged but is not required, unless the application is for a minor subdivision plat.
  - b. *Application.* Submittal of an application shall be in accordance with Development Standard No. 2-03.0. The final plat may be submitted prior to, or concurrent with, the tentative plat in accordance with criteria set forth in the development standard.
  - c. *Review.* Final plats are reviewed by the community design review committee (CDRC) in conformance with Development Standards 1-03.0 and 2-03.0.



1. As provided by the Land Use Code (LUC), section 4.1.7, the applicant has one (1) year from the date of tentative plat approval to secure approval and have the final plat recorded. This time period provides the applicant one (1) year within which to complete the platting process under the regulations in place at the time of tentative plat approval. Should the approval not be secured within the required timetable, the tentative plat and final plat shall be revised to comply with regulations at the time of re-submittal. The re-submittal initiates a new one (1) year time period. Refer to the LUC, section 4.2.5, for expiration dates on minor subdivisions.
  2. Extensions to the time period may be granted in accordance with section 4.1.7.4 of the Land Use Code (LUC).
- d. *Director's recommendation.* Upon recommendation of approval from all the community design review committee (CDRC) members, the DSD director shall forward the final plat to mayor and council for consideration. If the plat is dependent on the adoption of a rezoning ordinance, mayor and council consideration of the plat shall be scheduled for the same agenda as, or on an agenda following, the mayor and council consideration of the rezoning ordinance.
- e. *Mayor and council consideration.* The mayor and council consider the application for final approval in a public meeting. Mailed notice of the meeting is provided to the applicant and to all parties who have requested notice.
- f. *Notice of decision.* A notice of the mayor and council's decision shall be provided by the city clerk to the applicant and any party requesting such notice.
- g. *Recordation of plat.* The city clerk shall forward the final plat documents to the Office of the Pima County Recorder for recordation within five (5) days after approval of a final plat by mayor and council. If the use of the property proposed through the plat is dependent on the adoption of a rezoning ordinance, the recordation shall occur within five (5) days after the effective date of any change in zoning.

The subdivider shall pay the recording fees as specified by the Office of the Pima County Recorder. In addition to the recording fees, the subdivider shall pay the cost of providing reproducible copies of the recorded final plat to the city engineer, Tucson Water, county recorder, county assessor, and county addressing coordinator.

## **Sec. 23A-33.2 Minor Subdivision platting process**

Minor subdivision platting requirements are established by the Tucson Code, Chapter 23, Land Use Code (LUC), Article IV, Division 2.

1. *Application and review.* The application and review procedures for minor subdivision applications shall be the same as for final plats, as provided in section 23A-45(2) of this division.
2. *Land Survey Exception.* A minor subdivision may be recorded as a land survey instead of a tentative or final plat provided assurances acceptable to the Director are provided for any required infrastructure. A subdivider shall have one (1) year to obtain approval and record the survey under the regulations in place at the time of application. Should the one (1) year review period expire prior to the plat being recorded, the review of the project shall be as provided in Article IV of the LUC.

## **Sec. 23A-33.3 Land Splits.**

The procedure for review of land splits for compliance with the requirements of the Tucson Code, Chapter 23, Land Use Code (LUC), Article IV, Division 3, shall be as provided below. Applications filed under this procedure require review and decision by the development services department (DSD) director or designee for conformance with LUC requirements.

1. *Application.* Applications are submitted to the development services department (DSD) and shall be accepted as complete or rejected as incomplete within two (2) days. Application requirements shall be established by the DSD director and shall include the information required under the Land Use Code (LUC), section 4.3.3.1, and as listed below.
  - a. A completed application form.
  - b. A drawing or sketch showing the proposed land split. The drawing or sketch should be fully dimensioned and prepared at a scale that maintains legibility. The drawing or sketch shall show the following information.
    1. The boundaries of the original parcel or lot prior to the land split.
    2. The proposed lots.
    3. The rights-of-way adjacent to or within the property, including streets and easements.
    4. The locations and dimensions of any existing structures.
    5. The setbacks of existing buildings from existing and proposed property lines.

6. The land area of each proposed lot in square feet or acreage.
  7. Access to all proposed lots in compliance with section 3.2.14.5 of the Land Use Code (LUC).
  8. Whether there is any shared use of facilities between properties.
- c. Documentation of the land division history of the parcel. Documentation may consist of assessor's maps and records, deeds, title history search, or any other information that would credibly show the number of land divisions that have occurred from the original parcel over the last twenty (20) years or from the date of annexation if the annexation occurred within the last twenty (20) years.
  - d. If applicable, a copy of any easement agreement or other legal document that permits shared facilities. For specific information on the preparation of the drawing or sketch and other submittal requirements, refer to Development Standard 2-03.0 for land splits.
2. *Review.* Review is conducted by development services department (DSD) staff for implementation of provisions of the Land Use Code (LUC) on land splits, including the determinations provided in section 4.3.3.2 of the LUC and applicable requirements from state law.
  3. *Development services department (DSD) director's decision.* The development services department (DSD) director shall base the approval or denial of an application on the findings listed in the Land Use Code (LUC), section 4.3.3.3. Such decision shall be issued within ten (10) days of acceptance. As provided in the LUC, section 4.3.3.3.D, if a decision is not issued within the ten (10) day period, the land split shall be deemed not to constitute a subdivision.
  4. *Appeal.* The applicant may appeal the development services department (DSD) director's decision within fourteen (14) days of the date of decision. The appeal shall be considered in accordance with the Board of Adjustment Appeal Procedure, Sec. 23A-61.

(Ord. No. 9392, § 2(2.2.7), 5-22-00)

#### **Sec. 23A-34                      Development plan review.**

A development plan is a drawing of a project site that provides detailed information as to how a proposed project will be constructed in conformance with City ordinances and regulations. When a development plan is required to be processed in accordance with the Land Use Code (LUC), Chapter 23, Tucson Code, section 5.3.8, preparation, application, review, and approval shall be as follows.

1. *Applicability.* As provided by the Land Use Code (LUC), section 5.3.8, the development plan process is applied only on those projects whose approval is subject to the process in section 5.3.8. Typically, rezoning cases and special exception land use applications are approved subject to approval of a development plan in accordance with the procedures established in section 5.3.8 of the LUC. The purpose of the review is twofold:
  - a. The review provides the mayor and council with information on whether public infrastructure is currently available to the project or if public improvements have to be provided; and
  - b. The review assures the mayor and council that the completed project will conform with all conditions of approval applied by the mayor and council and is in substantial conformance with the concept plan presented during the public process, in addition to all city regulations applicable to the project. The plan is also reviewed to ensure the implementation of any additional requirements to which the applicant agreed at the time of approval of the rezoning or special exception land use request. Many of these requirements will be over and above the adopted regulations that are applied to projects with existing zoning.
2. *Preapplication*
  - a. *Preapplication conference.* A preapplication conference with development services department (DSD) staff is encouraged.
  - b. *Preparation of drawings.* Development plans shall be prepared in accordance with Development Standard 2-05.0.
3. *Review procedure.* Review of development plans shall be as follows.
  - a. *Application.* Applications shall be in accordance with submittal requirements as provided in Development Standard 2-05.0. Development plans, which are submitted as the result of a rezoning, a special exception land use, or another similar public process application, generally require the plan to be in substantial conformance with the concept plan submitted during the public portion of those processes. Any deviation from the concept plan requires review and approval in accordance with the Land Use Code (LUC), section 5.3.8.3.B, prior to review by the community design review committee (CDRC).
  - b. *Review.* Development plans are reviewed by the community design review committee (CDRC) in accordance with procedures established in Development Standards 1-03.0 and 2-05.0. If notification as to the status of the review is not provided to the applicant within sixty (60) days of

acceptance of the application, the development plan shall be deemed approved.

In accordance with section 5.3.8.2.A of the Land Use Code LUC), the applicant has one (1) year from the date the application was accepted for review to obtain approval under the zoning and development requirements in effect at the time of application. Should the approval not be obtained within the allotted time period, a revised development plan, which complies with regulations in effect at that time, is to be provided if the project is to continue.

- c. *Approval.* The development services department (DSD) director shall approve the development plan within five (5) days of receiving notification that all community design review committee (CDRC) members recommend approval, and it is confirmed that all conditions of approval as authorized by a rezoning, special exception land use, or other similar application have been met. This includes architectural review, dedication of right-of-way, building height, land use, or any other requirement pertinent to the individual case.

As provided by the Land Use Code (LUC), section 5.3.8.2.B, the approval is valid for one (1) year. The one (1) year time period provides the applicant the opportunity to secure permits and commence construction based on the regulations in effect during the review of the development plan. Expiration of the one (1) year time period prior to obtaining permits or commencing construction requires re-approval of the development plan based on regulations in effect at the time the development plan is resubmitted for review.

- d. *Notice of decision.* A notice of decision shall be issued to the applicant. The notice shall provide the case number and title, the decision, the date of the decision, the expiration date for that approval, and the address and telephone number of the development services department (DSD).

A written notice of approval is also provided to the planning department on development plans associated with rezoning or special exception land use applications. The notice shall provide information on how the conditions of approval on those applications were met.

- 4. *Issuance of permits.* As provided by the Land Use Code (LUC), section 5.3.8.3, any property which is subject to development in accordance with an approved development plan shall include, with the building permit documents, a copy of the approved plan bearing the appropriate approval signature. Any change to an approved development plan requires approval in accordance with the LUC, section 5.3.8.3.B.

Permits for the implementation of any development plan approved through this process and which is subject to the adoption of a rezoning ordinance cannot be issued until the rezoning ordinance is in effect. By state law, the effective date of the rezoning is thirty (30) days after the adoption of the rezoning ordinance.

**Sec. 23A-35                      Residential Cluster Project (RCP).**

The residential cluster project (RCP) is a development alternative permitted by the Land Use Code (LUC), Chapter 23 of the Tucson Code, in various zoning districts. While the development designator requirements, such as density, building height, setbacks, and lot coverage, are provided in each zone, specific provisions for the design and development of an RCP are found in the LUC, section 3.6.1, and in Development Standard 2-10.0.

1.     *Plat required.* Section 3.6.1.7 of the Land Use Code (LUC) requires all residential cluster projects (RCPs) to be platted. Platting, submittal, and review requirements shall be the same as provided in section 23A- 45, Subdivision Platting Procedures, of this chapter and those listed in development standard 2-10.0.
2.     *Public notice.* Public notice that a residential cluster project (RCP) application has been filed and accepted for review shall be sent within five (5) days after acceptance of the application. The notice shall include information on the plat, such as name; case number; type of development; site size; residential density, if applicable; where the plat can be viewed by the public; and the address and telephone number of the development services department (DSD). Such notice shall contain a sentence indicating that any person may request further notification of actions concerning the RCP. A minimum period of ten (10) working days from the date the notice is sent will be provided for response. The notice shall be sent to the following.
  - a.     All owners of property located within one hundred fifty (150) feet of the residential cluster project (RCP) site (any public rights-of-way abutting the RCP site are excluded from the measurement).
  - b.     At least two (2) designated representatives of any neighborhood association registered with the city and located within one (1) mile of the residential cluster project (RCP) site.
  - c.     Any other person determined by the development services department (DSD) director to be affected by the proposed residential cluster project (RCP).

## **DIVISION 2. SPECIAL ZONING REVIEW – LIMITED NOTICE PROCEDURE**

### **Sec. 23A-40. Limited Notice Procedure**

Special zoning reviews which involve minor modifications to design criteria or minor construction subject to design review shall be conducted in accordance with the following general procedures. These procedures provide limited notice to parties who may be affected by the development. It is the responsibility of the applicant to provide full and complete information on the project in a timely manner and the responsibility of the affected parties to provide comments to the applicant and/or the City in a timely manner. Limited Notice Procedures apply to certain Design Development Options (DDO), approval of resident artisan uses and requests for demolition of contributing, nonhistoric structures in historic districts and special exception uses approved by the DSD Director, “DSD Special Exceptions”.

1. *Eligibility for Limited Notice Procedure.* The Director shall determine whether a proposed development qualifies for the Limited Notice Procedure based upon the following.
  - a. There is a minor change in the development criteria that is requested.
  - b. There are few, if any, changes in the physical attributes of the property.
  - c. There is a potential for impact upon the neighborhood or the adjacent properties.
  - d. For commercial and office developments, a-c above shall apply and there is a benefit to area properties from the proposed redevelopment of the property.
  - e. DSD Special Exception land uses as designated in the LUC.
2. *Pre-application conference.* A pre-application conference with city staff to review requirements for the proposal under this Chapter, the LUC, Development Standards and other applicable policies and regulations is encouraged on all Limited Notice Procedure applications.
3. *Pre-application Neighborhood contact.* The applicant is encouraged to meet with the property owners who are entitled to notice of the application, the neighborhood association that includes the site and other interested parties prior to submittal of the application to explain the proposed development and potential impacts.
4. *Application.* Applications shall conform to the requirements set forth in the LUC, this Chapter and appropriate Development Standards and shall show the impact upon adjacent properties. Upon submittal of the application for minor HPZ review, a copy shall be provided to the designated member of the historic district

advisory board and the designated member of the TPHC Plans Review Subcommittee for review and comment.

5. *Notice of Submittal of the Application.* Notice of the application shall be provided to property owners within fifty (50) feet of the subject site and to the neighborhood association that includes the subject site.
6. *Public Comment Period.* There shall be a period of ten (10) days following the date on which notice is provided for submission of comments on the proposal to the Development Services Department.
7. *Review Process.* Review is conducted by the Development Services Department staff and other agencies, committees or advisory boards as specified in this Chapter, the LUC and as may be deemed appropriate by the Director.
8. *Decision by the Director.* The Director shall decide whether to approve or deny an application no earlier than one (1) day after the expiration of the public comment period and no later than ten (10) days after the expiration of the public comment period. The Director may impose conditions for approval of the application or may decide to require that the application proceed through the Procedure in accordance with Division 3 of this Chapter.
9. *Notice of the Decision.* The Director shall notify the applicant and parties of record in writing of the decision within three (3) days of the decision.
10. *Appeal to the Board of Adjustment.* A party of record may submit an appeal of the decision to the Board of Adjustment in accordance with Sec. 23A-61. A notice of intent to appeal must be received by the Development Services Department within five (5) days after the notice of decision. The complete appeal materials must be filed within thirty (30) days of the decision.
11. *Waiver of Comment, Notice of the Decision and Right to Appeal.* The time period for public comment, for notice of the decision and for the filing an appeal may be waived if the applicant provides written documentation that all parties of record have waived one or more of these provisions.
12. *Failure to Adequately Describe the Project.* If, upon receiving a complaint, the Zoning Administrator determines that the notice required by this section, failed to accurately or adequately describe the proposed development in a manner that substantially affects other property owners, the Zoning Administrator may determine that the approval is invalid and that the application must obtain a new approval through the Limited Notice Procedure in accordance with Division 3 of this Chapter. The Zoning Administrator's decision to invalidate an approval may be appealed by the applicant to the Board of Adjustment in accordance with 23A-61.



### **DIVISION 3. SPECIAL ZONING REVIEW – FULL NOTICE PROCEDURE**

Special zoning reviews which require the Full Notice Procedure involve DSD Director decisions on development applications in resource overlay zones, applications for variances before the Board of Adjustment and certain special exception uses that are decided by the Zoning Examiner, the “Zoning Examiner Special Exceptions”. This procedure provides broad notice to parties who may be affected by the development. It is the responsibility of the applicant to provide full and complete information on the project in a timely manner and the responsibility of the affected parties to provide comments to the applicant and/or the City in a timely manner. This procedure applies to applications as specified in the LUC and include the following.

#### **Sec. 23A-50.                   Application, Notice, Public Comment and Review.**

An application for and review of a special zoning request that requires Full Notice Procedure shall comply with the following.

1.     *Preapplication conference.* A preapplication conference with city staff to review requirements for the proposal under this Chapter, the LUC, Development Standards and other applicable policies and regulations is required on all Full Notice Procedure applications.
2.     *Neighborhood Meeting.* The applicant shall offer to meet at a specified time and place to discuss the proposed project with the persons and entities entitled to notice of the application. The offer shall be made at least ten (10) days prior to the date of the meeting. The meeting shall occur at least fifteen (15) and not more than (60) days prior to the submittal of the application. The neighborhood meeting shall be held at a location near the property that is the subject of the application. Notice of the meeting shall also be provided by the applicant to the office of the Council Ward in which the subject site is located. Documentation of the offer to meet and a summary of the meeting shall be submitted with the application.
3.     *Application.* Applications shall conform to the requirements set forth in the LUC, this Chapter and appropriate Development Standards. An application is accepted or rejected within seven (7) days of the date of receipt unless the applicant consents to additional time. An application may, in the discretion of the Director, be conditionally accepted.
4.     *Public Notice of the Application.* Applications for Full Notice Procedure shall be provide public notice as follows.
  - a.     *Mailed Notice.*
    1.    Shall be sent to the applicant, public service agencies affected by the application, all property owners within the subject site and within three

hundred (300) feet of the subject site, the neighborhood association(s) which includes or are within one (1) mile of the subject site, any person or organization that has filed a request and paid a fee to receive notification of public meetings and hearings on a particular process and any other person the Director determines has an interest in the matter.

2. Property owners shall be determined from the records of the Pima County Assessor that are available to the public no more than forty-five (45) days prior to the application or public hearing.
  3. Shall be provided to all parties of record on a previous hearing on the same application and to other affected property owners as required by each process.
  4. Shall be sent whether or not the properties are within the corporate limits of the city.
  5. Adjoining land under the same ownership as the subject site and public right of way abutting the site shall be included as part of the subject site in determining the boundaries from which the notice area is measured.
  6. For sites within the Airport Environs Zone (AEZ), notice shall be provided to the Tucson International Airport or to the Davis Monthan Airforce Base, whichever is applicable.
- b. *Posted Notice.* Notice shall be posted in such locations on the subject property as to be visible to the public. The posted notice shall identify the request, the date, time and location of any public comment period or public hearings and a telephone number for the City and the applicant where further information may be obtained.
5. *Public Comment Period.* There shall be a period of twenty (20) days following the date on which notice is mailed for submission of comments on the proposal to the Development Services Department.
  6. *Review Process.* Review is conducted by the Development Services Department staff and other agencies, committees or advisory boards as specified in this Chapter, the LUC and as may be deemed appropriate by the Director.
  7. *Denial of Plan Compliance Appeal.* If an application is rejected because it is not consistent with the General Plan or any applicable specific plan, the rejection of the application may be appealed by the applicant to the Mayor and Council in accordance with 23A-62.

**Sec. 23A-51****DSD Full Notice Procedure.**

This procedure applies to approvals within overlay zones, such as, but not limited to, the Hillside Development Zone (HDZ), Scenic Corridor Zone (SCZ), Environment Resource Zone (ERZ) and Historic Preservation Zone (HPZ). This section does not apply to applications for development subject to the Major Streets and Routes Setback Zone or the Gateway Corridor Zone, to the Rio Nuevo and Downtown Development (RND) Zone or the Drachman School Overlay (DSO) Zone. This procedure also applies to development applications subject to the Watercourse, Amenities, Safety and Habitat (WASH) regulations in Sec. 29-12 et. seq.

1. *Application, Notice, Public Comment and Review.* The preapplication conference, neighborhood meeting, application, notice, public comment, review and denial of plan appeal shall be in conformance with Sec. 23A-50.
2. *Maintenance and protection.* Prior to approval of a subdivision plat or issuance of building permits, such measures as covenants, assurances, or homeowners' associations, as may be necessary to ensure the long-term maintenance and control measures, may be required.
3. *Alteration of the property prohibited.* No grubbing, grading, excavation or construction shall occur nor shall the city issue any approval or permit for grubbing, grading, excavation or construction on any lot or parcel subject to the overlay zone unless and until the city approves a plat or plan in conformance with this Chapter, the LUC and the Development Standards.
4. *WASH Development.* Development subject to the Watercourse, Amenities, Safety and Habitat (WASH) regulations in Sec. 29-12 et. seq. shall be subject to review and approval in accordance with the DSD Full Notice Procedure, Sec. 23A-51, and to the standards for review set forth in Sec. 29-17.
5. *Time for issuance of decision.* The Director shall not make any decision prior to the expiration of the twenty (20) day period for public comment. The Director shall make a decision on applications no later than twenty (20) days after the expiration of the comment period or five (5) days after the latest recommendation from a city advisory board, whichever is later.
6. *Notice of Decision.* Notice of the decision on an application shall be mailed within three (3) days of the decision to all persons entitled to notice of the application.
7. *Appeal.* The decision of the Director may be appealed to the Mayor and Council on the grounds that the decision is not in conformance with the

criteria established by the LUC. The notice of intent to appeal shall be in accordance with Sec. 23A-62 and shall be filed with the City Clerk no later than fourteen (14) days after the date of the decision. The complete appeal materials must be filed within thirty (30) days of the decision. A copy of the appeal shall be provided to the Director at the time it is filed.

8. *Site inspection.* Prior to the issuance of an occupancy permit, the site will be inspected by the development services department (DSD) for compliance with the plans approved for the issuance of building permits and any changes authorized by the DSD director to those approved plans during construction.

## **Sec. 23A-52                      Board of Adjustment Full Notice Procedure.**

Applications for certain design development options and for variances before the Board of Adjustment shall be in conformance with Sec. 23A-50 and the following.

1. *Director's Recommendation.* The Director shall prepare a Recommendation in accordance and forward it, together with the DRB and STAC recommendations when required, to the applicant and the Board of Adjustment not less than five (5) days prior to the scheduled public hearing. The recommendation shall be a written report that includes the request and present plans, policies, regulations, and other information relating to the request. The recommendation shall include a recommended action by the Board of Adjustment or a statement that the Development Services Department has no objection to the request.
2. *Advisory Board Review.* Variance requests from the Environmental Resource Zone regulations require review by the Design Review Board (DRB) and the Stormwater Technical Advisory Committee (STAC) as provided in LUC Sec. 2.8.8.6. Variance requests from Scenic Corridor Zone (SCZ), the Gateway Corridor Zone, the Landscaping and Screening regulations, and the Native Plant Protection regulations require DRB review as provided in LUC Sec. 2.8.2.14, LUC Sec. 2.8.4.5, LUC Sec. 3.7.7.5, and LUC Sec. 3.8.8.3, respectively.
3. *Board of Adjustment Public Hearing.* The Board of Adjustment shall hold a public hearing in accordance with the following and the Board of Adjustment's Rules and Regulations.
  - a. Notice of the public hearing shall be provided at least fifteen (15) and no more than thirty (30) days before the date of the public hearing to all parties who received notice of the application. Notice shall be provided in the same manner as the application. The Notice of the public hearing may be consolidated with the notice of the application.
  - b. Except as permitted in the public hearing and the procedures for submission of written materials, no person shall communicate with a

member of the Board of Adjustment regarding a matter to be decided by the Board any time prior to the expiration of the time for reconsideration of a decision.

- c. The chair of the hearing body or person presiding may administer oaths and may compel the attendance of witnesses and the production of relevant information, including witnesses requested by any party.
  - d. The chair or person presiding may impose any reasonable limitations on the number of speakers heard and may establish the nature and length of testimony by speakers.
  - e. Comments may be given by any person, either verbally or in writing.
  - f. Following the close of the hearing and prior to making a decision or recommendation, the hearing body may discuss the matter and further question staff or any party submitting comment.
  - g. A record of the hearing is made and retained as a public record.
4. *Board of Adjustment Decision.* The Board of Adjustment may close the public hearing or continue it to a specific date, time, and place provided the continuance is not for more than one hundred twenty (120) days. The Board of Adjustment shall issue a decision in accordance with the required findings set forth in LUC Sec. 5.1.7.3.B and in accordance with state law at the conclusion of the public hearing.
5. *Notice of Decision.* Notice of the decision shall be mailed within three (3) days of the decision to the applicant and any persons requesting the notice.
6. *Reconsideration.* The Board of Adjustment may consider one request for reconsideration by the applicant or a party of record, provided:
- a. A written request is filed with the Zoning Administrator within fourteen (14) calendar days after the Board has rendered its decision, and
  - b. The request is based upon new evidence or materials which were not presented and could not reasonably have been presented at the public hearing on the case.
7. *Change of Condition.* After a DDO or a variance has been granted by the Board, the property owner/applicant may request a change to a condition for approval as imposed by the Board based upon changed circumstances which affect the condition. The request shall be heard by the Board and the Board shall initially

determine whether the request is for a minor change of condition that does not materially alter the variance and does not materially affect any other properties. If the Board determines that the request is for a minor change of condition, it may decide whether to approve or deny the change. If the Board determines that the request is not a minor change of condition and there are reasonable grounds for the request, the case shall be scheduled for a public hearing and notice provided in conformance with this section.

### **Sec. 23A-53                      Zoning Examiner Special Exception Full Notice Procedure**

Applications for special exception land uses that are decided by the Zoning Examiner, “Zoning Examiner Special Exceptions”, and for expansions of nonconforming uses and substitutions of nonconforming uses (uses not within the same land use class) shall be decided by the Zoning Examiner in accordance with the preapplication conference, neighborhood meeting, application, notice, public comment, review and denial of plan appeal shall be in conformance with Sec. 23A-50 and the following.

1.     *Director's Recommendation.* The Director shall prepare a Recommendation and forward it to the applicant and the Zoning Examiner not less than fifteen (15) days prior to the scheduled public hearing.
2.     *Zoning Examiner's Public Hearing.* The public hearing shall be held before the Zoning Examiner within seventy (70) days of acceptance of the application. Public hearings are held in accordance with the following and the Zoning Examiner's Rules and Procedures.
  - a.     Notice of the public hearing shall be provided at least fifteen (15) and no more than thirty (30) days before the date of the public hearing to all parties who received notice of the application. The notice of the public hearing may be consolidated with the notice of the application.
  - b.     The Zoning Examiner may administer oaths and may compel the attendance of witnesses and the production of relevant information, including witnesses requested by any party.
  - c.     The Zoning Examiner may impose any reasonable limitations on the number of speakers heard and may establish the nature and length of testimony by speakers.
  - d.     Comments may be given by any person, either verbally or in writing.
  - e.     A record of the hearing is made and retained as a public record.
3.     *Conduct of the Zoning Examiner.* The Zoning Examiner shall have the ability to obtain information from all parties, including public agencies, prior to the public hearing, provided all requests for information are in writing and the request and

information are included as part of the public record. The Zoning Examiner shall also have the ability, after the close of the public hearing, to obtain additional information or clarify information presented and of record at the hearing provided the request for additional information or clarification is requested in writing and such request and information are included as part of the record or in the report to the Mayor and Council.

Beyond these limitations, the Zoning Examiner shall not communicate, directly or indirectly, with any party or party's representative in connection with any issue involved with a particular request, except upon notice and opportunity for all parties to participate; use or rely upon any communication, report, staff memorandum, or other material prepared in connection with the particular case, unless it is made a part of the record; or inspect the site with any party or party's representative, unless all parties are given an opportunity to be present.

4. *Zoning Examiner's Decision.* The Zoning Examiner may close the public hearing or continue the public hearing to a specified time, date and place provided the continuance is not for more than thirty (30) days. Within five (5) days of the close of a hearing, the Zoning Examiner shall make a decision to approve, approve with conditions, or deny the application.
5. *Notice of Decision.* Notice of the decision on an application shall be mailed within three (3) days of the decision to the applicant and all persons who request the notice.
6. *Appeal.* The Zoning Examiner's decision may be appealed by a party of record to the Mayor and Council in accordance with Sec. 23A-62 by submitting a notice of intent to appeal to the City Clerk within fourteen (14) days from the date of the decision with a copy delivered to DSD. The complete appeal materials must be filed within thirty (30) days of the decision.
7. *Change of Condition.* An applicant may request a change in a condition of approval of a Zoning Examiner Special Exception land use. The request shall be reviewed by staff for recommendation to the Zoning Examiner. The request shall then be considered at a public hearing in accordance with subsections 3, 4, 5, 6, 7 and 8 above.

## **Sec. 23A-54                      Suspension or Termination of Special Exception Uses.**

Where a special exception land use is designated in the LUC as subject to suspension or revocation for failure to conform to adopted conditions and there is reason to believe that it is being operated in a manner that violates the conditions imposed for the use, the use may be suspended or revoked as follows.

1. *Determination by the Zoning Administrator.* Upon receipt of information establishing a reasonable grounds for determining that a conditional use is

operating in violation of established conditions, the Zoning Administrator shall initiate such further investigation as may be necessary and, based upon that investigation, shall determine if a violation of the conditions exists.

2. *Notice of violation.* Upon determination that a violation of conditions exists, the Zoning Administrator shall notify the property owner and all other parties who may be identified with the operation of the use of the determination that a violation exists. The notice shall state the facts that support the determination. The notice shall further state that the use may be suspended, subject to additional conditions or revoked if the property is not brought into compliance with all use conditions. The determination shall not be final until a period of fourteen (14) days from the date it is issued or until an appeal to the Board of Adjustment has been completed.
3. *Appeal to the Board of Adjustment.* A party who has received a determination that a conditional use will be suspended, subject to additional conditions or revoked, may appeal that decision by filing a notice of appeal with the Zoning Administrator within fourteen (14) days of the date of the decision. The appeal shall state the reasons for the appeal. Upon receipt of such a notice, the Zoning Administrator shall schedule a public hearing before the Board of Adjustment to consider the appeal.
4. *Public Notice.* Public notice shall be provided in accordance with Sec. 23A-50.
5. *Public Hearing.* The Board of Adjustment shall conduct a public hearing to determine whether the use has complied with required conditions. The Board of Adjustment shall determine whether the Zoning Administrator's decision is supported by evidence in the record at the hearing. The Board of Adjustment may affirm, reverse or modify the decision of the Zoning Administrator and may place additional or different conditions upon the use.
6. *Final Decision.* Where no appeal is filed or the Board of Adjustment affirms or modifies the decision of the Zoning Administrator, a determination shall become final. Failure to comply with a final order shall be a continuing violation of the Land Use Code for each day of operation that is not in full compliance.
7. *Notice of Decision.* Notice of the decision on an application shall be mailed within three (3) days of the decision to the applicant and all persons who request the notice.



## **Division 4. APPEAL PROCEDURES**

### **Sec. 23A-60. Appeal Procedures.**

1. *Administrative Appeals.* Appeals from zoning and development decisions shall be to the Board of Adjustment or to the Mayor and Council as specified in each procedure. Appeals are limited to review of substantive zoning regulations such as design and performance criteria and required findings for approval. Where there is no further appeal to a City body is specified, the decision is the final City decision and any further appeal or special action may be filed with the Superior Court as provided by law.
2. *Takings Appeals for individual dedications and exactions or excessive reduction of property values.* Appeals to final discretionary decisions that require a dedication or an exaction as a condition for granting a development approval and appeals to the adoption or amendment of a zoning regulation on the grounds that the regulation creates an unconstitutional taking of private property shall be processed in accordance with section 23A-63.

### **Sec. 23A-61. Board of Adjustment Appeal Procedure.**

Appeals to the Board of Adjustment may be made from decisions by the Zoning Administrator, including interpretations of the Land Use Code, notices of violations of the Land Use Code, determinations of violations of conditional uses, and review decisions where the DSD Director has challenged the historic designation of a structure proposed for demolition and other determinations in accordance with the LUC. Appeals shall be reviewed and decided by the Board of Adjustment following a public hearing. The Board of Adjustment may affirm, reverse or modify the decision subject to appeal and may impose conditions necessary and appropriate to implement the LUC and other pertinent regulations.

1. *Filing of an Appeal.* Appeals shall be filed with the Zoning Administrator within the time provided by the procedure from which the decision is appealed. An appeal shall be scheduled for consideration by the Board of Adjustment at the next regular meeting which is at least thirty-five (35) days following the filing of the appeal. The Zoning Administrator may, for good cause, grant one extension to the second regular meeting after the filing of the appeal. The filing of an appeal stays the issuance of permits and approvals and all formal land use action on the development proposal subject to the appeal.
2. *Limitation on Contact with the Board of Adjustment.* Except for duly noticed site inspection, study and public hearing, no person shall contact or discuss the merits of any appeal with the members of the Board of Adjustment between the filing of the appeal and the final determination by the Board of Adjustment.

3. *DSD Director's Report.* The DSD Director shall forward the appeal, any additional materials provided by the appellant, the recommendations of the DRB or other applicable advisory body, any materials provided by any other party and the Director's report and recommendation to the Board of Adjustment no later than five (5) days prior to the scheduled meeting.
4. *Public Notice.* Public notice of the Board of Adjustment public hearing shall be provided not less than fifteen (15) days and not more than thirty (30) days prior to the hearing. Public notice shall be to the applicant, the same parties notified of the initial application and those who provided oral or written comments in the course of the prior procedure. Notice shall be provided in the same manner as for the procedure from which the appeal is filed.
5. *Board of Adjustment Public Hearing.* The Board of Adjustment may hold a study session and shall hold a public hearing on the appeal in accordance with Sec. 23A-52 (2) and the Rules and Regulations of the Board of Adjustment. The Board of Adjustment shall reach a decision following the close of the public hearing. The Board of Adjustment may continue the public hearing for up to forty-five (45) days. The public hearing shall not be continued for more than forty-five (45) days without the consent of the applicant, regardless of who is the appellant.
6. *Notice of the Decision.* The decision by the Board of Adjustment shall be announced and shall be final at the time the decision is made following the public hearing. Written confirmation of the decision shall be provided within three (3) days of the date of decision to all parties of record.
7. *Reconsideration.* The appellant, the applicant or the Zoning Administrator may request reconsideration of a decision on an appeal provided the request is filed with the Zoning Administrator within fourteen (14) days of the date the decision is announced. A request for reconsideration may be made only where there is an error in fact or law in the decision or where a party has new evidence that was not available at the time of the public hearing. The request shall be scheduled for the next regular meeting of the Board of Adjustment.
8. *Issuance of Permits and Approvals.* No permits or development approvals based on the decision shall be issued, no inspections performed or other formal action taken, while the appeal is pending before the Board of Adjustment or before the expiration of the period for reconsideration where no request is filed. If a request for reconsideration is filed, no permits or development approvals based on the decision shall be issued, or other formal action taken until completion of action on the request for reconsideration is announced by the Board of Adjustment.

## **Sec. 23A-62. Mayor and Council Appeal Procedure.**

Appeals to the Mayor and Council may be made from decisions by the Development Services Director on Hillside Development Zone, Scenic Corridor Zone, Environmental Resource Zone and Historic Preservation Zone applications, on certain special exception land uses and such other matters as are designated in this chapter and in the LUC. The Mayor and Council shall consider the appeal following a public hearing in accordance with this section. The Mayor and Council may affirm, reverse or modify the decision that is appealed and may establish such conditions as are appropriate to implement the LUC and other pertinent regulations.

1. *Filing of an Appeal.* Appeals shall be filed with the City Clerk with a copy to DSD within the time provided by the procedure from which the decision is appealed. The filing of an appeal stays the issuance of any permits or development approvals based on the decision and all formal land use action on the development proposal subject to the appeal.
2. *Limitation on Contact with the Mayor and Council.* No person shall contact or discuss the merits of any appeal with the members of the Mayor and Council between the filing of the appeal and the final determination by the Mayor and Council.
3. *DRB Review.* Appeals from decisions on SCZ, ERZ and HPZ applications shall be forwarded to the DRB for review and recommendation if such review and recommendation has not occurred.
4. *STAC Review.* Appeals from decisions on ERZ and WASH applications shall be forwarded to the Stormwater Technical Advisory Subcommittee (STAC) for review and recommendation if such review and recommendation has not occurred.
5. *City Manager's Communication.* The DSD Director shall forward the appeal, any additional materials provided by the appellant, the recommendations of the applicable advisory body(ies), any materials provided by any other party and the City Manager's report and recommendation to the Mayor and Council no later than five (5) days prior to the scheduled meeting.
6. *Public Notice.* Public notice of the Mayor and Council public hearing shall be provided not less than fifteen (15) days and not more than thirty (30) days prior to the hearing. Public notice shall be in accordance with Sec. 23A-50.
7. *Mayor and Council Public Hearing.* The Mayor and Council may hold a study session and shall hold a public hearing on the appeal in accordance with the Rules and Regulations of the Mayor and Council. The Mayor and Council shall reach a decision following the close of the public hearing. The Mayor and Council may continue the public hearing for up to forty-five (45) days. The public hearing shall not be continued for more than forty-five (45) days without the consent of the property owner of the subject site.

8. *Mayor and Council Decision.* Mayor and Council shall decide the appeal based upon the application, testimony, evidence and other materials considered in the prior proceeding, the City Managers Communication and the testimony and evidence presented in the public hearing. Mayor and Council shall consider the provisions, purpose and intent of the plans and regulations that apply to the appeal.
9. *Notice of the Decision.* The decision by the Mayor and Council shall be announced and shall be final at the time the decision is made following the public hearing. Written notice of the decision shall be provided within three (3) days of the date of decision to all parties of record.
10. *Issuance of Permits and Approvals.* No permits or development approvals based on the decision shall be issued, or other formal action taken, while the appeal is pending before the Mayor and Council or before the expiration of the period for reconsideration where no request is filed. If a request for reconsideration is filed, no permits or development approvals based on the decision shall be issued, or other formal action taken until completion of action on the request for reconsideration is announced by the Mayor and Council.

**Sec. 23A-63. Takings Appeal Procedure, individual dedications and exactions and excessive reduction of property value.**

Appeals asserting that a final discretionary decision or a zoning regulation constitute a “Taking” of property in violation of the Fifth Amendment to the United States Constitution (a “Takings Appeal”) shall be processed in accordance with this section.

1. *Decisions subject to appeal.*
  - a. A Takings Appeal may be filed by a property owner are as follows.
    1. Where the property owner has a legally recognized property interest in the property that is subject to the City decision; and
    2. Where a final discretionary administrative decision has been made by the Development Services Director, Zoning Examiner or the Mayor and Council to require the dedication of property or the payment of a monetary exaction as a condition for the approval of the development application in a manner that is alleged to constitute a taking of property; or
    3. A zoning regulation has been adopted or amended and is alleged to constitute a taking of property.

- b. A Takings Appeal may not be filed by a property owner regarding the application of fees, assessments, taxes or any other dedication or exaction required by a legislative act that does not give discretion to the administrative agency or official to determine the nature or extent of the requirement.
- 2. *Filing of Appeal.* An appeal shall be in writing and filed with or mailed to the Zoning Examiner within thirty (30) days after the final action is taken. Final action on a zoning regulation shall be the effective date of the regulation. No fee shall be charged for an appeal under this section 23A-63.
- 3. *Public Hearing and Notice of Public Hearing.* The Zoning Examiner shall schedule a public hearing on the appeal to be held no later than thirty (30) days after receipt of the appeal. Notice of the public hearing shall be mailed to the appellant and to all parties entitled to notice of the administrative decision at least ten (10) days before the appeal is heard.
- 4. *Statement of City Authority.* In all proceedings under this Section 23A-63, the City shall provide the Zoning Examiner with a statement of the City's Authority to require the dedication or exaction or to adopt or amend the zoning regulation. The City has the burden to establish in its statement of authority the nexus between the dedication or exaction and a legitimate governmental interest and that the proposed dedication, exaction or zoning regulation is roughly proportional to the impact of the proposed use, improvement or development or, in the case of a zoning regulation, that the zoning regulation does not create a taking of property in violation of the Fifth Amendment to the United States Constitution.
- 5. *Zoning Examiner's Decision.* The Zoning Examiner shall decide the appeal within five (5) days after the appeal is heard. If the City has met its burden set forth in paragraph 4 above, the appeal shall be denied. If the City has failed to meet its burden as set forth in paragraph 4 above, the Zoning Examiner shall:
  - a. In the case of a dedication or exaction, modify or delete the requirement appealed under this section.
  - b. In the case of a zoning regulation, transmit a recommendation for further action to the Mayor and Council.

\* \* \*

SECTION 10. Tucson Code Chapter 23A, Article III, Division 2 is amended to read as follows:

**Article III. Definitions.**

\* \* \*

## **Division 2. Listing of Words and Terms**

### **23A-81. Definitions – A**

*Advisory Board.* The Historic District Advisory Board established pursuant to LUC Sec. 5.1.10.

\* \* \*

### **Sec. 23A – 84. Definitions – D**

*Director.* The Director of the Development Services Department.

*DSD.* The Development Services Department

\* \* \*

### **Sec. 23A – 94. Definitions – N**

*Neighborhood Association.* A neighborhood association registered with the City's Department of Neighborhood Resources.

\* \* \*

### **Sec. 23A – 96. Definitions – P**

*Party of record.* Party of record includes the applicant, all persons who received notice of the application during the review process, all persons who provided a written statement of an interest in the project prior to the issuance of a decision, and all persons who gave testimony at a public hearing.

*Plans Review Subcommittee.* The same as the Tucson – Pima County Historical Commission Plans Review Subcommittee.